

# EXPORT PROMOTION COUNCIL FOR EOUs & SEZs

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## **EPCES CIRCULAR NO. 296**

In order to keep all our members updated with the latest announcements and amendments made in Law, we present to you a brief of updates that could be relevant for you all.

### **Notification No. 25 /2018 - Central Tax dated 31st May, 2018**

The time limit for furnishing the return by an Input Service Distributor in FORM GSTR-6 for the months of July, 2017 to June, 2018, has been extended till the 31st July, 2018.

### **Press Release dated 31st May, 2018**

It is hereby notified that Implementation date for roll-out of e-way bills in the following states would be as follows:

- \* Chhattisgarh, Goa, Jammu & Kashmir, Mizoram, Odisha & Punjab is 1st June, 2018;
- \* Tamil Nadu is 2nd June,2018;
- \* West Bengal is 3rd June,2018.

E-Way Bill system for intra-State movement of goods will be implemented throughout the country latest by 03rd June, 2018

### **Circular No.13/2018-Customs dated 30th May, 2018**

CBIC has decided to allow factory stuffing and sealing of reefer containers with perishable/ temperature sensitive export goods in the presence of Customs officials. Implementation of procedure will be as follows:-

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- Application to jurisdictional commissioner to avail supervised stuffing with a list of export goods.
  - On being satisfied, permission would be granted for supervised stuffing and sealing. A list of exporters to whom such facility is given and a list of export goods shall be sent to RMCC and port of export by Commissioner.
  - Such request shall be submitted by exporter at least 24 hours prior to stuffing. Officers shall be deputed for supervision, stuffing and sealing.
  - Officers to ensure that containers are stuffed with only export goods that are sensitive to temperature and in accordance with list of goods submitted by exporter.
  - Containers are sealed with RFID e-seals procured by the exporter and data to be uploaded by exporter as prescribed.
  - RMCC ensures that reefer containers sealed under supervision are not examined at port of export.
  - The container details exporter wise are provided to RMCC monthly which in turn verifies details with facilitation provided to exporter for such reefer container and informs any discrepancies.
  - The said procedure shall be observed at the request of the exporter, in other cases existing self-sealing procedure with RFID e-seals applies.

- For other types of sensitive cargo, the Commissioner of Customs at the port may exercise suitable discretion for valid reasons to override the RMS instructions and inform the RMCC of instances of overriding the instructions and reasons thereof.
- Reefer container may be selected for scanning/examination on specific information or occasional random basis or where it has come to notice that the RFID seal has been tampered with after being sealed in the presence of the Customs officer.

### **Circular No.210/2/2018-Service Tax dated 30th May, 2018**

- The said circular gives clarification on applicability of service tax on ambulance services provided to government by private service provider (PSP) under National Health Mission (NHM). The entire project has 3 legs of activities: 1st - Services by government to public, 2nd - services by PSP for the public and 3rd - services by PSP for government.
- According to definition of service, any activity carried out by one person for another without consideration is not covered. Also Notification No.25/2012-Service tax states services provided by way of transportation of a patient in an ambulance, other than health care services by a clinical establishment, an authorized medical practitioner or paramedics, are exempted from the whole of the service tax. Thus the activities provided by the State government and the PSP to patients are not leviable to service tax.
- Also, the provision of ambulance services by PSP to State governments under the NHM is a service provided to government by way of "public health" and hence exempted under Notification no 25/2012-Service Tax dated 20.06.2012.

### **Trade Notice No.14/2018-19 dated 30th May, 2018**

The said notice highlights the difficulties faced in availing benefits in case of exports made under the project export category i.e. they are unable to file shipping bills under chapter 98 which notifies higher incentives and are required to file under specific HS code of product with lower incentives.

Guidelines issued in this regard are as follows:

- An "identification tag" will be created in the Online MEIS Application to ensure differentiation of applications pertaining to Project Exports from the normal exports.
- Exporter will select this tag and submit his application as per rates available in MEIS module for the exported HS code.
- Self-certified copies of following documents will be submitted to DGFT headquarters:
  1. E-version copy of the said MEIS application.
  2. Announcement of project by the project authority
  3. Allotment letter/certificate issued by the concerned project authority to the exporter
  4. Proof of Registration of the project with their concerned Bank in India.
  5. Copies of Shipping bill
  6. Any other necessary documents
- The documents will be examined and after approval, NIC will be informed to make edits in online application module for MEIS entitlements and rate of rewards for particular HS codes.
- The changes will be communicated to the concerned RA by the DGFT headquarters for release of the MEIS Scrips
- RA will issue the Duty Credit Scrips.

### **Judicial Pronouncements**

- **CHENNAI CESTAT :Orchid Health Care Vs. CCE - Assessee**, a 100% EOU engaged in manufacture of Formulation, is registered with Central Excise Department - The officers of preventive unit visited the premises on the intelligence gathered that the assessee have imported/purchased indigenous raw materials and capital goods without payment of duty and have used the same in R&D and have availed irregular input tax credit on the services used in R&D and thereby availed wrong exemption benefit under EOU scheme - SCN was issued proposing to deny exemption under Notification 52/2003-Cus and Notification 22/2003-CE and for recovery of duty, interest and for imposing

penalties - The assessee have explained in detail how the R&D activities are linked to the process of manufacture - After the R&D process, the samples of final products undergo test and then are manufactured and exported by assessee - It is very much clear that R&D activities are directly linked to the process of manufacture of final products of assessee - The assessee being a 100% EOU, the finished products are exported - Therefore, availment of concession of duty on inputs and capital goods and Cenvat credit on input services is fully in order - A similar issue was discussed by Tribunal in case of Dr. Reddy Laboratories Ltd. - Following the precedent decisions in case of Dr. Reddy Laboratories Ltd. and Serum Institute of India Ltd., demand cannot sustain - Impugned order set aside - Appeal allowed.

- **GUJARAT HIGH COURT: SCARLET PRINTS LLP Vs STATE OF GUJARAT** - Refund claim arising out of Export of goods – denial of refund on the ground that exports were through courier agency and the proof of export was inadequate – HELD - In a fast moving world with new modes of communication, transportation, technology coming up every other day, it is expected that the department finds proper solutions to the new emerging situation. Export of goods even in small quantities by individual manufactures, dealers and traders has become possible and convenient on account of systematic mode of transportation provided by courier agencies. When a courier agency thus, exports goods in a container or a consignment, it would necessarily contain goods of large number of customers. Inability or reluctance of the courier service to share with its customers such as the petitioner full details of shipping bills in such cases would be understandable - merely because the petitioner is unable to produce copies of shipping bills, the authority cannot reject the refund claim as long as the petitioner can demonstrate with certainty, the factum of actual export of goods - as long as there is alternative proof of documentary nature available, the department must consider it, process it and pass suitable order in terms of law in such refund applications – the impugned order is aside and assessee petition is allowed .
- **BOMBAY HIGH COURT: Sarla Performance Fibers Ltd Vs UOI** -The assessee is an EOU engaged in manufacture & export of synthetic yarn - It operates two units, both of which are licensed u/s 58 of the Customs Act, 1962 as well as u/s 6 of the CEA, 1944 - The licenses for both units were extended from time to time - During the period of dispute, the assessee purchased polyester yarn from units located in DTA - The assessee claimed that the supplies received from units located in DTA would be deemed export under certain provisions of the FTP & so the supplier was entitled to duty drawback - The assessee relied on relevant provisions of the Drawback Rules, the Foreign Trade (Development and Regulation) Act, 1992 and the FTP and claimed that drawback had been allowed in the past at All Industry Rate of Duty Drawback - The assessee filed two claims for drawback but both were rejected on grounds that the assessee already availed Cenvat credit - Subsequently the assessee's claim for deemed export drawback as per of All Industry Rate of Duty Drawback Schedule was rejected - It was claimed that issues arising from different interpretations of the provisions of the DGFT, could be resolved by the DGFT - Thus, the assessee ought to have approached the Additional Secretary in the Commerce Ministry & that such remedy was not utilized by the assessee.  
**Held** - the assessee's claim is based on the premise that it could avail refund on duty drawback even after availing Cenvat credit - Further it is stated that if the supplier does not avail credit, it has the option to claim the duty drawback as per Column 'A' of All Industry Rate of Duty Drawback Schedule - Also these rates apply to deemed exports *mutatis-mutandis* - Where a supplier opts for Cenvat credit, an option is also provided for BCD to be taken back as brand rate of duty drawback, based upon documents proving payment of duty - The Revenue operated in the belief such option was not provided for in FTP 2015-20 - However, the FTP 2015-2020 only takes into account the clarified position of FTP 2009-2014 and cannot be considered as amendment of policy provision - The Revenue's findings that the refund of duty drawback for Customs duty can only be made through brand rate of fixation, are incorrect - Hence the claim for refund as per All Industry Rates of Duty Drawback Schedule cannot be denied.
- **MUMBAI CESTAT : CC Vs Chiripal Industries Ltd-** Department of Revenue was required to act in tandem with the DGFT and Ministry of Commerce - Under Notification No. 1(RE-2008)/2004-09 dated 11.4.2008, the Foreign Trade Policy amendment with effect from 1.4.2008 had reduced the prevailing customs duty rate in respect of EPCG scheme from 5% to 3% - While policy was amended, Notification of customs implementing the said change was issued on 9.5.2008, 39 days after the issue

of DGFT notification - ideally there should not be any discord between the EPCG and the Customs authorities - Appellants were issued a licence as well as authorization prescribing 3% rate of duty - In these circumstances, failure of customs authorities to issue notification on time cannot be held against the respondent - no merit in Revenue appeal - impugned order upheld and Revenue appeal dismissed- Appeal dismissed.

- **MUMBAI CESTAT: ISMT Ltd Vs CCE**-Whether export duty is required to be paid in respect of goods supplied to SEZ and EOU units or not stands decided by Gujarat High Court in the case of Essar Steel Ltd. - where it is held that export duty can be levied only under the Customs Act, 1962 and not SEZ Act and which stands upheld by the Supreme Court ,when the appeal filed by the Revenue was rejected - impugned order set aside and appeal allowed with consequential relief: Appeal allowed.
- **WEST BENGAL ADVANCE RULING – GST - PHOTO PRODUCTS COMPANY PVT LTD** - Whether activity of printing of content supplied by the customers on photographic paper amounts to supply of goods or supply of service - whether the activity carried out by the Applicant is taxable under HSN 4911 or SAC 9989 – HELD – The photo prints supplied by them to their customers are not marketable commodities in the open market and as goods they have no value to persons other than the specific customer who provides the input content. Hence, the printed material has no value as independent goods - The Applicant, therefore, cannot be said to be supplying goods classifiable under heading 4911 of the Tariff Act - the Applicant is providing a service, namely, the service of printing and is liable to be classified under SAC 9989 and is taxable at 12%.
- **DELHI HIGH COURT - Interim order- Writ Petition by Sales Tax Bar Association, Delhi**- Department has to file status report on the issue of notices on mismatch between GSTR-1 and GSTR-3B, however dealers can only rectify the mistakes in GSTR3B in next month. Reply furnished by GSTN to the grievance of assessee should be effective & disclose the method & manner the issue has been resolved.

Hope the newsletter was useful for you all.

In case of any queries, feel free to connect with the council.

This issues with the approval of Offtg. Chairman EPCES.

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